

Title 13

CHAPTER 157

INSANITY LACK OF CAPACITY AS A DEFENSE

§ 4801. Test of ~~insanity~~ capacity in criminal cases

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental illness, developmental disability, or traumatic brain injury, he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms “mental ~~disease or defect~~ illness” does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

(b) The defendant shall have the burden of proof in establishing ~~insanity~~ lack of capacity as an affirmative defense by a preponderance of the evidence.

§ 4802. M'Naghten test abolished

The M'Naghten test of insanity in criminal cases is hereby abolished.

§ § 4803 -4813. Repealed.

§ 4814. Order for examination

(a) Any court before which a criminal prosecution is pending may order the Department of Mental Health, ~~or, if applicable, the Department of Disabilities, Aging and Independent Living~~, to have the defendant examined by a psychiatrist ~~or a psychologist~~ at any time before, ~~during or after trial, and before final judgment in any of the following cases:-~~ once during the course of the proceedings.

~~(1) when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a mental illness, developmental disability, traumatic brain injury or other condition bearing upon the issue of whether he or she had the mental state required for the offense charged;~~

~~(2) when the defendant, the State, or an attorney, guardian, or other person acting on behalf of the defendant, raises before the Court the issue of whether the defendant is mentally competent to stand trial for the alleged offense;~~

~~(3) when the Court believes that there is doubt as to the defendant's sanity at the time of the alleged offense; or~~

~~(4) when the Court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.~~

(b) An order under this section may be issued by the Court on its own motion, or on motion of the State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

§ 4815. Place of examination; temporary commitment

(a) It is the purpose of this section to provide a mechanism by which a defendant is examined in the least restrictive environment deemed sufficient to complete the examination and prevent unnecessary pre-trial detention and substantial threat of physical violence to any person, including a defendant.

(b) The order for examination for a person in need of mental health treatment may provide for an examination at any jail or correctional center, ~~or at the Vermont State Hospital or its successor in interest,~~ or at the Vermont Psychiatric Care Hospital or at a designated hospital, or at such other place as the Court shall determine, after hearing a recommendation by the Commissioner of Mental Health or, if the examination is for a person with an intellectual disability, from the Commissioner of the Department of Disabilities, Aging and Independent Living.

(c) A motion for examination shall be made as soon as practicable after a party or the Court has good faith reason to believe that there are grounds for an examination. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, the Court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the Court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the Court, the Court may forgo consideration of the screener's recommendations.

(f) The Court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the Court finds sufficient facts to order an examination, it may be ordered to be completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

(g)(1) Inpatient examinations for individuals with mental illness at the ~~Vermont state hospital or its successor in interest,~~ Vermont Psychiatric Care Hospital or a designated hospital. The Court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the Court shall determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title.

(3) An order for inpatient examination only for persons with mental illness shall provide for placement of the defendant in the custody and care of the Commissioner of Mental Health.

(A) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest,~~ or a designated hospital psychiatrist determines that the defendant is not in need of inpatient hospitalization prior to admission, the Commissioner shall release the defendant pursuant to the terms governing the defendant's release from the Commissioner's custody as ordered by the Court. The Commissioner of Mental Health shall ensure that all individuals with mental illness who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest,~~ or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The Commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~State~~ Psychiatric Care Hospital ~~psychiatrist, or a psychiatrist of its successor in interest,~~ or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no

refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day ~~if~~ when the defendant is no longer in need of inpatient hospitalization, unless the terms established by the Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the Commissioner notifies the Court that the examination has been completed, unless the terms established by the Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If the defendant is to be released pursuant to subdivision (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the Commissioner of Corrections, the defendant shall be returned to the defendant's residence or to another appropriate place within the State of Vermont by the Department of Mental Health or the Department of Disabilities, Aging and Independent Living at the expense of the Court.

~~(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the Court issuing the original order, on request of the Commissioner and upon good cause shown, may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.~~

(6) As used in this subsection, "in need of inpatient hospitalization" means an individual has been determined ~~under clinical standards of care to require inpatient treatment~~ to be a "person in need of treatment" as defined at 18 V.S. A. § 7101 (17) and that there is no less restrictive alternative to hospitalization.

(h) Except upon good cause shown, defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.

(i) As used in this section:

(1) "no refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high

intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

§ 4816. Scope of examination; report; evidence

(a) Examinations provided for in the preceding section shall have reference to:

(1) ~~mental~~ competency of the person examined to stand trial for the alleged offense; and

(2) ~~sanity~~ capacity to form the intent to commit the offense of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a developmental disability shall include a current evaluation by a psychologist skilled in assessing individuals with those conditions. The order for such an evaluation shall be directed by the Court to the Department of Disabilities, Aging and Independent Living.

(c) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, if applicable shall prepare a report containing findings in regard to each of the matters listed in subsection (a) of this section. The report shall be transmitted to the Court issuing the order for examination, and copies of the report shall be sent to the appropriate Commissioner, the State's Attorney, and to the respondent's attorney if the respondent is represented by counsel.

(d) No statement made in the course of the examination by the person examined, whether or not he or she has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's or psychologist's report shall be admitted into evidence as an exhibit on the issue of the person's ~~mental~~ competency to stand trial, and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the Court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the Court from calling the psychiatrist or psychologist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the ~~State's~~ expense of the party calling the witness, or, if called by the Court, at the Court's expense.

§ 4817. Competency to stand trial; determination

(a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the State, at any time before final judgment, raises before the court before which the person is tried or is to be tried, the issue of whether the person is incompetent to stand trial, or if the Court has reason to believe that the person may not be competent to stand trial, a hearing shall be held before the Court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the Court has reason to believe that the person may be incompetent to stand trial due to a mental illness, developmental disability, or traumatic brain injury, the hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist or psychologist in accordance with sections 4814-4816 of this title.

(c) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, the person is found by the court having jurisdiction of his or her trial for the offense to have become competent to stand trial.

§ 4818. Failure to indict by reason of ~~insanity~~ incapacity

When a grand jury before which an indictment is heard returns the indictment as not found by reason of ~~insanity~~ incapacity of the person so charged at the time of the alleged offense, the grand jury shall so certify to the court.

§ 4819. Acquittal by reason of ~~insanity~~ incapacity

When a person tried on information, complaint, or indictment is acquitted by a jury by reason of ~~insanity~~ incapacity at the time of the alleged offense, the jury shall state in its verdict of not guilty that the acquittal is for that reason.

§ 4820. HEARING REGARDING COMMITMENT

When a person charged on information, complaint or indictment with a criminal offense:

(1) Is reported by the examining psychiatrist or psychologist following examination pursuant to sections 4814–4816 of this title, to have been ~~insane~~ without capacity at the time of the alleged offense;

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a ~~mental disease or mental defect~~ mental illness or an intellectual disability; or

(3) Is not indicted upon hearing by grand jury by reason of ~~insanity~~ incapacity at the time of the alleged offense, duly certified to the court; or

(4) Upon trial by court or jury is acquitted by reason of ~~insanity~~ incapacity at the time of the alleged offense; the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the commissioner of mental health or the commissioner of disabilities, aging and independent living. Such a person may be confined in jail or some other suitable place by order of the court pending a hearing for a period not exceeding 15 days.

§ 4821. Notice of hearing; procedures

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the State's Attorney or other prosecuting officer representing the State in the case, shall be given notice of the time and place of a hearing and standing to appear under the preceding section. Procedures for hearings for persons who are mentally ill shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings for persons who are intellectually disabled or have a traumatic brain injury shall be as provided in 18 V.S.A. chapter 206, subchapter 3.

§ 4822. Finding and order; mentally ill persons

(a) If the Court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the Court shall issue an order of commitment directed to the Commissioner of Mental Health, which shall admit the person to the care and custody of the Department of Mental Health for ~~an indeterminate period up to ninety (90) days~~. In any case involving ~~personal~~ serious bodily injury or threat of ~~personal~~ serious bodily injury, the committing Court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody under the initial order.

(b) The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and treatment, to

be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.

(c) Notwithstanding the provisions of subsection (b) of this section, ~~at least 10 days~~ prior to the proposed discharge from the custody of the Commissioner of any person committed under this section, the Commissioner of Mental Health shall give notice of the discharge to the committing court and State's Attorney of the county where the prosecution originated. ~~In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing Court issuing the order under that section. No notice of proposed discharge is required when the discharge would result from the expiration of the term of any current order of treatment.~~ In all ~~other~~ cases, when the committing Court orders a hearing under subsection (a) of this section or when, in the discretion of the Commissioner of Mental Health, a hearing should be held prior to the discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section, and the matter may be consolidated with any application for continued treatment filed pursuant to 18 V.S.A. § 7620 whether such application is either pending or later filed in that court. Notice of the hearing shall be given to the Commissioner, the State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the State's Attorney may enter an appearance in the proceedings and may request, at the State's Attorney's expense, examination of the patient by an independent psychiatrist who may testify at the hearing. In cases where no hearing is required by the Court or requested by the Commissioner, the State's Attorney's sole remedy upon receiving notice of a proposed discharge shall be the filing, or refiling, or criminal charges against the person in the Superior Court, Criminal Division.

(d) The Court may continue the hearing provided in subsection ~~(c)~~ (a) of this section for a period of ~~15~~ seven (7) additional days upon a showing of good cause. Neither the hearing nor the continuation shall prevent the Commissioner from discharging the committed person once the initial commitment is complete.

(e) If the Court during the initial commitment period determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the Department of Mental Health.

(f) The Court shall issue its findings and order not later than ~~15 days~~ 3 days from the date of hearing.

§ 4823. Finding and order; persons with an intellectual disability

(a) If the Court finds that the person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the Court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for care and habilitation of such person for an indefinite or limited period in a designated program.

(b) The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under the order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.

(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then resides, unless the person resides out of state in which case the proceedings shall be conducted in the original committing Court.